IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

AS.No. 321 of 2002(E)

OS.394/1991 of PRL.SUB COURT,KOTTAYAM
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APPELLANT: PLAINTIFF

E.K.GOPALAN NAIR, EX-SECURITY-CUM-VIGILANCE OFFICER, OIL PALM INDIA LTD., NOW RESIDING AT GOKULAM, KATTAMPAK P.O., NJEEZHOOR, KOTTAYAM.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.B.KRISHNAN

RESPONDENTS: DEFENDANTS.
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1. OIL PALM INDIA LTD., KOTTAYAM, REPRESENTED BY THE MANAGING DIRECTOR, OFFICE OF THE OIL PALM INDIA LTD., HEAD OFFICE AT ARUTHOOTTY, KOTTAYAM MUNICIPAL TOWN, KOTTAYAM

2. STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, KOTTAYAM.

BY GOVERNMENT PLEADER SHRI BASANT BALAJI R2
SRI.JOSEPH MARKOSE)
SRI.MATHEWS K.UTHUPPACHAN)
SRI.JOSEPH KODIANTHARA) R1

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 321 OF 2002

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Dated this the 30th day of October, 2007

J U D G M E N T

This appeal is filed by the plaintiff in O.S. No.394 of 1991 on the file of the Sub Court, Kottayam challenging the decree and judgment passed by that court dismissing a suit filed by him claiming damages.

2. Appellant was working in the Police Department as Detective Inspector. He was due to retire from service on 31.5.1986. In the meanwhile he was appointed as Security-cum-Vigilance Officer in the first respondent company. Though the appellant sought deputation for a period of three years, the same was not allowed. He was given permission to take up re-employment under the first respondent company after the date of superannuation from Government service. Government clarified that the period of reemployment will be for three years from 1.6.1986 to 1.5.1989. On 29.5.1986 first respondent passed an order extending his service until further orders. But subsequently on 30.3.1987 Government itself

requested the first respondent to forward details of persons who were reemployed and working under the reemployment scheme after 31.3.1987. Appellant filed O.P. No.3155 of 1987 apprehending termination. But the service of the appellant was terminated with effect from 8.5.1987. According to the appellant that termination was illegal and he was entitled to continue for a period of three years. Original Petition was disposed of with an observation that the remedy available for the appellant was to approach a civil court. Thereafter appellant filed the suit from which this appeal arise. Appellant claimed a sum of RS.52,448.65 as damages. According to the appellant had he continued in service till 31.3.1989 he would have received that amount. Further he claimed two months' salary as leave surrender benefits.

3. First respondent contested the suit. It was contended that it was a policy decision of the Government to terminate the services of retired employees who were employed in public sector undertakings. It was contended that appellant was paid one month's salary. It was also contended that the termination of the service of the appellant

was legal and proper. The claim for damages was disputed. Suit was decreed allowing the appellant to recover an amount of Rs.59,924.65. Challenging the decree and judgment first respondent filed A.S. No.707 of 1997 before this Court. In view of the contention raised by the first respondent that the suit was bad for non-joinder of parties, appellant made a request that he may be given an opportunity to implead the State also. This Court by judgment dated 23.2.2000 set aside the decree and remanded the case for fresh disposal. In the meanwhile first respondent deposited an amount of Rs.50,000/- before the trial court. This Court allowed the appellant herein to withdraw the said amount on furnishing security. It was further observed that in case the amount had already been withdrawn no steps for restitution shall be taken till the disposal of the appeal. After remand learned Sub Judge found that the termination was legal and proper and dismissed the suit. Challenging that judgment and decree, this appeal is filed.

4. Learned counsel appearing for the appellant has argued that the trial court misdirected itself in an erroneous

line of reasoning. It is argued that the trial court misconstrued the scope of the remand order. Learned counsel for the first respondent argued that the decision to terminate the service of the appellant was not on account of the mala fide action , but it was on account of the policy decision taken by the Government and hence the said respondent had no other option but to implement the same. It is argued that the trial court after elaborately considering the evidence found that the appellant was not entitled to any damages. That is a finding of fact based on good evidence and it do not call for any interference. Learned Sub Judge found that there was no material on record to show that the service of the appellant was terminated without due notice to him. It was also held that the termination of the appellant was consequential to the withdrawal of the sanction by the Government and in the absence of evidence to hold that withdrawal was tainted with mala fides his claim for damages is not sustained.

5. According to the appellant he was not given any valid notice by the Government. After remand, Government was impleaded as a party to the suit. State has not produced

any material to show that the order was passed with due notice to the appellant. Appellant can only prove that he was not given any notice. If as a matter of fact notice was served on the appellant, that is a fact which could have been proved by producing documents. So the finding that the appellant failed to prove lack of notice is not correct.

6. First respondent had contended that the termination was in view of the policy decision of the Government. The trial court accepted that contention. That finding do not call for any interference. There is nothing on record to establish the mala fides alleged on the part of the first respondent. It is to be noted that the service of the appellant was availed by the first respondent only on account of the order passed by the Government for reemploying the appellant for three years with effect from 1.6.1986. So it is not possible to find fault with the first respondent in terminating the service of the appellant. The finding of the learned Sub Judge that the appellant is not entitled to the reliefs sought for in the plaint is only to be confirmed.

7. Material on record shows that the first respondent

had deposited Rs.50,000/- in pursuance of the interim order passed by this Court in C.M.P. No.837 of 1998 in C.M.P. No.5145 of 1997 in A.S. No.707 of 1997. The said amount was withdrawn by the appellant as early as in 1998 itself. Almost a decade has elapsed after the withdrawal of the amount deposited. Further, the appellant has got a case that he was not given any notice by the Government. So I am of the view that it is only just and proper to issue a direction to the first respondent not to cause any hardship to the appellant by recovering the amount withdrawn by the appellant at this old age. I direct the first respondent not to recover the amount already deposited and withdrawn by the appellant. But I make it clear that the first respondent is not liable to pay any further amount or interest to the appellant.

Appeal is disposed of in the above terms. No costs.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S. NO. 321 OF 2002

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J U D G M E N T

30TH OCTOBER, 2007